

SINHA LAW

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October 25, 2017

Via Hand Delivery

OCT 31 2017

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Folsom Ready Mix, Inc.
11374 Gold Dredge Way
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Joshua Neff
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Folsom Ready Mix, Inc.
3401 Fitzgerald Road
Rancho Cordova, CA 95742

Via US Mail

Lisa C. Silva
Agent for Service
Grantline Investments, LLC
8081 Paint Way
Sacramento CA 95830

Re: 60-Day Notice of Violations and Intent to File Suit ("Notice") Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Folsom Ready Mix, Inc – Rancho Cordova.:

The California Environmental Protection Association ("CEPA") provides this 60-day Notice of violations ("Notice") of the Federal Clean Water Act ("CWA" or "Act") 33 U.S.C. § 1251 *et seq.*, that CEPA believes are occurring at the Folsom Ready Mix facility located at 11374 Gold Dredge Way in Rancho Cordova, California ("the Facility" or "the site"). Pursuant to CWA §505(b) (33 U.S.C. §1365(a)), this Notice is being sent to you as the responsible property owners, officers, operators or managers of the Facility, as well as to the U.S. Environmental Protection Agency ("EPA"), the U.S. Attorney General, the California State Water Resources Control Board ("SWRCB"), and the California Central Valley Regional Water Quality Control Board ("RWQCB").

CEPA is an environmental citizen's group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California.

This Notice addresses the violations of the CWA and the terms of California's Statewide General Permit for Dischargers of Storm Water for Industrial Activities ("General Permit") arising from the unlawful discharge of pollutants from the Facility into Folsom South Canal, and eventually into the Mokelumne River Watershed and the American River.

Folsom Ready Mix (the "Discharger") is hereby placed on formal notice by CEPA that after the expiration of sixty (60) days from the date this Notice was delivered, CEPA will be entitled to bring suit in the United States District Court against the Discharger for continuing violations of an effluent standard or limitation, National Pollutant Discharge Elimination System ("NPDES") permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the Code of Federal Regulations.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

The Discharger filed a Notice of Intent ("NOI") on March 1, 2016, with respect to the Facility, agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI, and the Discharger was assigned Waste Discharger Identification ("WDID") number 5S34I016690.

However, in its operations of the Facility, the Discharger has failed and is failing to comply with specific terms and conditions of the General Permit as described in Section II below. These violations are continuing in nature. Violations of the General Permit are violations of the CWA, specifically CWA § 301(a) and CWA § 402(p). Therefore, the Discharger has committed ongoing violations of the substantive and procedural requirements of CWA § 402(p) and of NPDES Permit No. CAS000001, State Water Resources Control Board Order 2014-0057-DWQ (the "General Permit") relating to industrial activities at the Facility.

II. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Facility Operations

The Folsom Ready Mix plant in Rancho Cordova is a ready-mixed concrete facility, situated on approximately 10 total acres, and includes two separate dry batch concrete plants, a main office, a recycling yard and a truck maintenance facility. Facility Operations are covered under Standard Industrial Classification Code (SIC) 3273 – Concrete Ready Mix.

Because the real property on which the Facility is located is subject to rain events, the range of pollutants discharged from the Facility and identified in this Notice discharge indirectly into the Folsom South Canal.

The Folsom South Canal diverts water from the American River, and is contracted for irrigation, industrial and municipal water supply. It is also connected to the Mokelumne Aqueduct, which provides a large portion of the San Francisco Bay Area's water supply.

B. Folsom Ready Mix' Specific Violations

1. Failure to Timely Re-Apply for Permit Coverage

Folsom Ready-Mix – Rancho Cordova failed to timely reapply for coverage under the new General Permit by July 1, 2015, in violation of Sections II.B.1.b, II.B.4.b and XXI.B of the Permit.

The Discharger first applied for Industrial General Permit coverage on August 7, 2001. However, General Permit (Order No. 2014-0057-DWQ) replaced and superseded the previous Permit (Order 97-03-DWQ), as of July 1, 2015. All Dischargers covered under General Permit Order 97-03-DWQ who intended to continue industrial activities regulated under the General Permit after the expiration of Order 97-03-DWQ on June 30, 2015, were required per Sections II.B.1.b and XXI.B of Order No. 2014-0057-DWQ to register for coverage by resubmitting permit registration documents via the State's Storm Water Multiple Application and Report Tracking System ("SMARTS"), on or before July 1, 2015.

Pursuant to Section II.B.4.c of the General Permit, existing Dischargers with coverage under the previous permit who failed to register for NOI coverage by July 1, 2015, were subject to administrative termination of their permit coverage.

Folsom Ready Mix – Rancho Cordova did not apply for coverage under the current permit (Order No. 2014-0057-DWQ) until March 1, 2016. Thus, the Discharger was operating without valid NDPES coverage from July 1, 2015, through March 1, 2016.

Permit noncompliance constitutes a violation of the Clean Water Act and the Water Code, as well as the General Permit, and is grounds for enforcement action against the Facility.

2. Failure to Collect and Analyze Storm Water Samples Pursuant to the General Permit

The Discharger has failed to provide the RWQCB with the minimum number of annual documented results of Facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

A Qualifying Storm Event (“QSE”) is a precipitation event that produces a discharge for at least one drainage area and is preceded by 48 hours with no discharge from any drainage area.

Furthermore, Section XI.B.11.a requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event. Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. Two storm water sample analyses for the time period July 1, 2015, through December 31, 2015. Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 11/2/15, 11/8/15, 11/15/15, 12/12/15, and 12/8/15.
- b. One storm water sample analysis for the time period January 1, 2016, through June 30, 2016 (one sample was collected on 2/18/16). Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 1/5/16, 1/13/16, 1/17/16, 1/22/16, 1/29/16, 2/18/16, 3/4/16, 3/10/16, 4/9/16, 4/22/16, 4/27/16, and 5/20/16; and
- c. One storm water sample analysis for the time period January 1, 2017, through June 30, 2017 (one sample was collected on 1/18/17). Qualified Storm Events occurred in the vicinity of the Facility on at least the following relevant dates: 1/4/17, 1/7/17, 1/10/17, 1/18/17, 1/20/17, 2/6/17, 2/9/17, 2/20/17, 3/20/17 and 4/6/17.

Further, the Discharger has not applied for or received a No Exposure Certification (“NEC”) for the facility, pursuant to Section XVII, which provides as follows:

XVII. CONDITIONAL EXCLUSION - NO EXPOSURE CERTIFICATION (NEC)

A. Discharges composed entirely of storm water that has not been exposed to industrial activity are not industrial storm water discharges. Dischargers are conditionally excluded

from complying with the SWPPP and monitoring requirements of this General Permit if all of the following conditions are met:

1. There is no exposure of Industrial Materials and Activities to rain, snow, snowmelt, and/or runoff;
2. All unauthorized NSWDS have been eliminated and all authorized NSWDS meet the conditions of Section IV;
3. The Discharger has certified and submitted via SMARTS PRDs for NEC coverage pursuant to the instructions in Section II.B.2; and,
4. The Discharger has satisfied all other requirements of this Section.

On August 31, 2016, Jacque Kelley of the Central Valley Regional Water Board inspected the Folsom Ready Mix-Rancho Cordova Facility. After reviewing the Facility's 2015/16 Annual Report and Monitoring Report, she noted that the Facility only sampled one time at one sampling location during the 2015/16 reporting year. Ms. Kelley discussed with Joshua Neff and Rob Flammang at that time the lack of appropriate sampling and indicated that the Facility's normal operating hours should be used for the purpose of sampling, as indicated in the Facility's Storm Water Pollution Prevention Plan (SWPPP). The Board followed up with a formal letter addressed to Scott Silva on September 9, 2016, indicating that the Facility needed to sample four times per year, according to their hours of operation as listed in their SWPPP.

The Facility SWPPP clearly indicates that the official hours of operation for Folsom Ready Mix – Rancho Cordova are 4:00 a.m. to 4:00 p.m. Monday through Saturday. The Facility also has periodic extended hours of Monday through Sunday, 24 hours a day.

Nevertheless, the Discharger failed to collect the appropriate number of samples (as listed above), even after being warned by the Water Board twice.

3. Falsification of Annual Reports Submitted to the RWQCB

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for

gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 12, 2016, the Discharger submitted its Annual Report for the Fiscal Year 2015-2016. This Report was signed under penalty of law by Rob Flammang, the Environmental Manager for Folsom Ready-Mix.

The Facility's Annual Report for fiscal year 2015-2016 included Attachment 1 as an explanation for why the Discharger failed to sample the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B. Mr. Flammang certified in Attachment 1 to the Annual Report, under penalty of perjury, that between July 1, 2015 and June 30, 2015 "**No Qualifying Storm Event occurred during facility operating hours**".

Government records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during the fiscal year 2015-2016, at least 17 Qualified Storm Events (QSEs) occurred near the Facility **during operating hours**.

CEPA notes that the Discharger failed to provide a reason for the insufficient number of storm water run-off samples it collected for fiscal year 2016-17, as indicated below.

4. Failure to File Complete Annual Report

Pursuant to Section XVI.A of the General Permit, all Dischargers must certify and submit via SMARTS an Annual Report no later than July 15th following each reporting year [July 1 through June 30 of each year], using the standardized format and checklists contained within the SMARTS database system.

Pursuant to Section XVI.B of the General Permit, the Annual Report must contain the following elements: (a) a Compliance Checklist that indicates whether the Discharger has

complied with and addressed all applicable requirements of the General Permit; (b) an explanation for any non-compliance with requirements within the reporting year, as indicated in the Compliance Checklist; (c) an identification, including page numbers and/or sections, of all revisions made to the SWPPP within the reporting year; and (d) the date(s) of the required Annual Evaluation.

Folsom Ready Mix – Rancho Cordova’s Annual Report uploaded into the SMARTS database system for the reporting year ending June 30, 2017, was essentially nothing more than a cover page and included none of the required elements.

5. Failure to Collect Samples From Each Drainage Area at all Discharge Locations

Section XI.B.4 of the General Permit requires Dischargers to collect samples from all discharge locations, regardless of whether the discharges are substantially similar. Dischargers may analyze a combined sample consisting of equal volumes, collected from as many as four substantially similar discharge locations, provided that the Discharger submits a Representative Sampling Reduction Justification form with its sample analysis, and the samples are combined in the lab in accordance with Section XI.C.5 of the General Permit. Furthermore, Representative sampling is only allowed for sheet flow discharges or discharges from drainage areas with multiple discharge locations.

According to the Discharger’s current Storm Water Pollution Prevention Plan (SWPPP) and corresponding site map, the Facility has five mandatory discharge locations, listed as “Plant NW D1”, “Yard NW D1”, “Plant Driveway”, “Shop” and “Shop Driveway.” In addition, the SWPPP lists two additional outfalls in the event of heavy rainfall: “Plant SW Pond” and “Yard SW.”

The storm water runoff sample analyses the Discharger uploaded for the following sample dates did not include samples from all five minimum outfalls as follows:

- a. Sample analysis dated 2/18/16: Missing samples from 3 Outfalls (CEPA is unable to determine which outfalls are missing, as the lab sample only indicated results from “Plant 1” and “Plant 2”;
- b. Sample analysis dated 10/14/16: Missing sample from Plant NW D1, Yard NW D1 and Shop;
- c. Sample analysis dated 11/18/16: Missing sample from Plant NW D1, Yard NW D1, Shop and Shop Driveway;
- d. Sample analysis dated 12/15/16: Missing samples from Plant NW D1, Yard NW D1, Shop and Shop Driveway; and
- e. Sample analysis dated 1/18/17: Missing samples from Yard NW D1, and Shop.

6. *Discharges in Violation of the General Permit*

Section 402(p) of the Clean Water Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit such as the General Permit. 33 U.S.C. § 1342. Sections I.C.27 and III.A and B of the General Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Section XXI.A of the General Permit requires Dischargers to comply with effluent standards or prohibitions established under section CWA 307(a) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions.

Sections III and VI of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment; cause or threaten to cause pollution, contamination, or nuisance; cause or contribute to an exceedance of any applicable water quality standards in any affected receiving water; violate any discharge prohibitions contained in applicable Regional Water Board Water Quality Control Plans (Basin Plans) or statewide water quality control plans and policies; or contain hazardous substances equal to or in excess of a reportable quantity listed in 40 Code of Federal Regulations sections 110.6, 117.21, or 302.6.

The Discharger's sampling and analysis results reported to the RWQCB confirm discharges of specific pollutants and materials other than storm water, in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

Table 2 of the General Permit (TABLE 2: *Parameter NAL Values, Test Methods, and Reporting Units*) outlines specific Annual and Instantaneous Numeric Action Levels ("NALs) for common parameters. A copy of Table 2 is included with this Notice.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

| Date | Discharge Point | Parameter | Concentration in Discharge | NAL Annual & Instantaneous Value |
|----------|-----------------|--------------|----------------------------|----------------------------------|
| 10/14/16 | Plant Driveway | Oil & Grease | 19 mg/L | 15 mg/L |
| 10/14/16 | Shop Driveway | Iron | 1.2 mg/L | 1.0 mg/L |
| 01/18/17 | Plant NW D1 | Iron | 1.3 mg/L | 1.0 mg/L |
| 01/18/17 | Plant Driveway | Iron | 1.2 mg/L | 1.0 mg/L |
| 01/18/17 | Shop Parking | Iron | 1.1 mg/L | 1.0 mg/L |

The Discharger may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, CEPA includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

The violations discussed herein are derived from eye witness reports and records publicly available. These violations are continuing.

The Facility discharges to the Folsom South Canal, a tributary of the Mokelumne and American Rivers, waters of the United States. All illegal discharges and activities described in this Notice occurred in close proximity to the above-identified waters. During storm events, discharges from the Facility are highly likely to discharge to said waters.

The RWQCB has determined that the watershed areas and affected waterways identified in this Notice are beneficially used for: water contact recreation, non-contact water recreation, fish and wildlife habitat, preservation of rare and endangered species, fish migration, fish spawning, navigation, and sport fishing. Information available to CEPA indicates the continuation of unlawful discharges of pollutants from the Facility into waters of the United States, specifically Folsom South Canal and the Mokelumne and American Rivers, in violation of the General Permit and the CWA. CEPA is informed and believes, and on such information and belief alleges, that these illegal discharges will continue to harm beneficial uses of the above-identified waters until the Discharger corrects the violations outlined in this Notice.

III. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Folsom Ready-Mix, Inc., and its property owner Grantline Investments, LLC, as well as employees of Folsom Ready-Mix, Inc. responsible for compliance with the CWA.

IV. THE LOCATION OF THE VIOLATIONS

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Folsom Ready Mix-Rancho Cordova's permanent facility address of 11374 Gold Dredge Way in Rancho Cordova, California, and includes the adjoining navigable waters of Folsom South Canal and the Mokelumne and American Rivers, respectively - both waters of the United States.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 1, 2015, to the date of this Notice. CEPA may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is the California Environmental Protection Association ("CEPA").

To ensure proper response to this Notice, all communications should be addressed as follows:

Khavin Sinha, Attorney for
CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION
1645 Willow Street, #150
San Jose, CA 95125
Telephone: (408) 791-0432
Email: xsinha@sinha-law.com

VII. PENALTIES

The violations set forth in this Notice affect the health and enjoyment of members of CEPA who reside near and recreate at the Folsom South Canal Trail, and the Mokelumne and American Rivers, which members of CEPA use for recreation, sports, fishing, swimming, boating, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the Discharger's violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. §1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1-19.4.

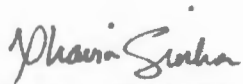
CEPA believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

VIII. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. CEPA encourages the Discharger and/or its counsel to contact CEPA or its counsel within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein.

During the 60-day notice period, CEPA is willing to discuss effective remedies for the violations, however, if the Discharger wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. CEPA reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,



Xhavin Sinha
Attorney for CALIFORNIA ENVIRONMENTAL PROTECTION ASSOCIATION

Enclosure

TABLE 2 – Parameter NAL Values, Test Methods and Reporting Units

SINHA
LAW

60-Day Notice of Intent to Sue
October 25, 2017
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Copies to:

Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Executive Director
State Water Resources Control Board
P.O. Box 100
Roseville, CA 95812-0100

Jeff Sessions, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Executive Officer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670

TABLE 2: Parameter NAL Values, Test Methods, and Reporting Units

| PARAMETER | TEST METHOD | REPORTING UNITS | ANNUAL NAL | INSTANTANEOUS MAXIMUM NAL |
|---------------------------------|-----------------------|-----------------|------------|--------------------------------|
| pH* | See Section XI.C.2 | pH units | N/A | Less than 6.0 Greater than 9.0 |
| Suspended Solids (TSS)*, Total | SM 2540-D | mg/L | 100 | 400 |
| Oil & Grease (O&G)*, Total | EPA 1664A | mg/L | 15 | 25 |
| Zinc, Total (H) | EPA 200.8 | mg/L | 0.26** | |
| Copper, Total (H) | EPA 200.8 | mg/L | 0.0332** | |
| Cyanide, Total | SM 4500-CN C, D, or E | mg/L | 0.022 | |
| Lead, Total (H) | EPA 200.8 | mg/L | 0.262** | |
| Chemical Oxygen Demand (COD) | SM 5220C | mg/L | 120 | |
| Aluminum, Total | EPA 200.8 | mg/L | 0.75 | |
| Iron, Total | EPA 200.7 | mg/L | 1.0 | |
| Nitrate + Nitrite Nitrogen | SM 4500-NO3- E | mg/L as N | 0.68 | |
| Total Phosphorus | SM 4500-P B+E | mg/L as P | 2.0 | |
| Ammonia (as N) | SM 4500-NH3 B+ C or E | mg/L | 2.14 | |
| Magnesium, total | EPA 200.7 | mg/L | 0.064 | |
| Arsenic, Total (c) | EPA 200.8 | mg/L | 0.15 | |
| Cadmium, Total (H) | EPA 200.8 | mg/L | 0.0053** | |
| Nickel, Total (H) | EPA 200.8 | mg/l | 1.02** | |
| Mercury, Total | EPA 245.1 | mg/L | 0.0014 | |
| Selenium, Total | EPA 200.8 | mg/L | 0.005 | |
| Silver, Total (H) | EPA 200.8 | mg/L | 0.0183** | |
| Biochemical Oxygen Demand (BOD) | SM 5210B | mg/L | 30 | |

SM – Standard Methods for the Examination of Water and Wastewater, 18th edition

EPA – U.S. EPA test methods

(H) – Hardness dependent

* Minimum parameters required by this General Permit

**The NAL is the highest value used by U.S. EPA based on their hardness table in the 2008 MSGP.